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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 1,280 115

CARLOTA BENITEZ SAMPAYO,
Petitioner,

vs.

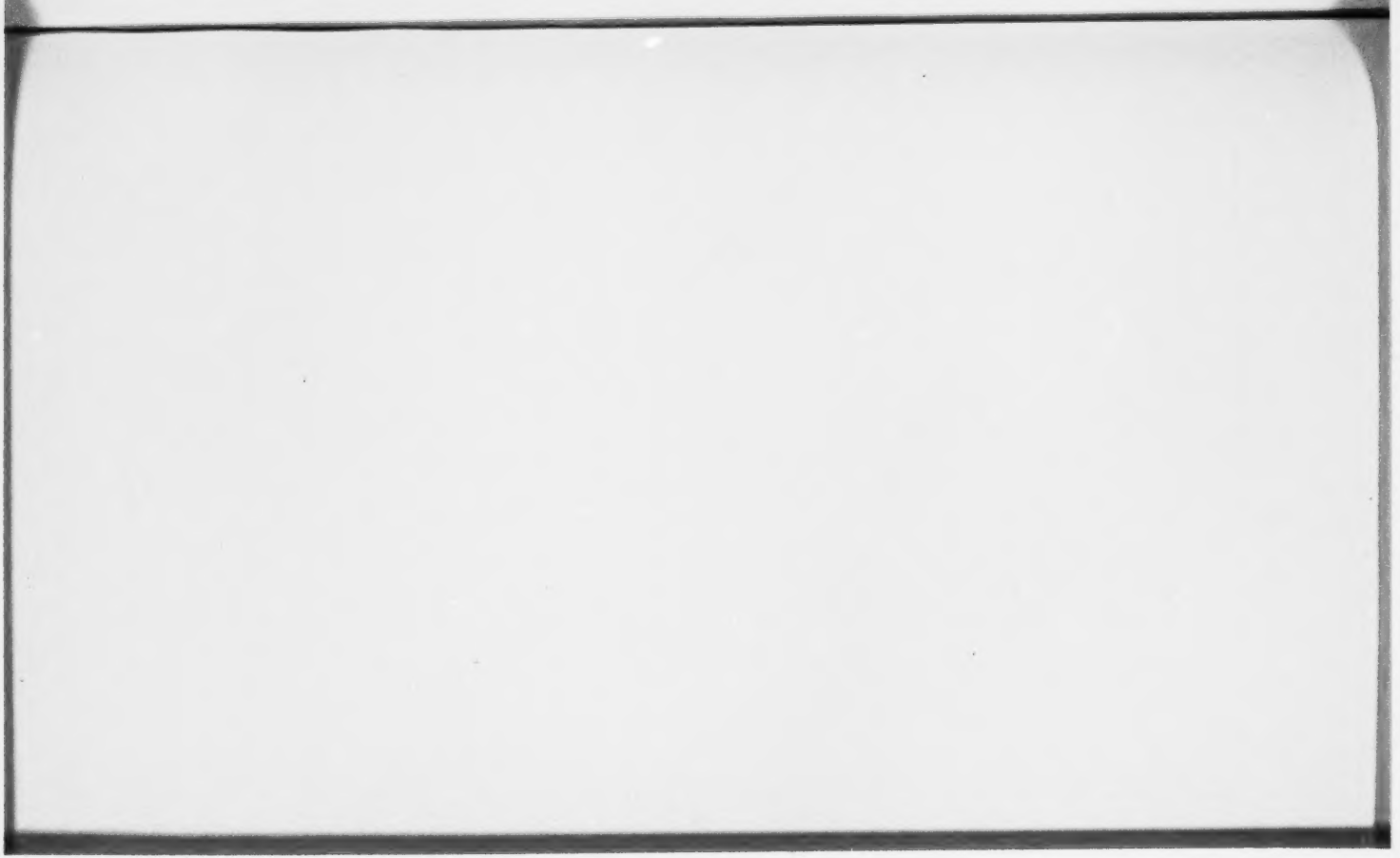
THE BANK OF NOVA SCOTIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

BRIEF IN OPPOSITION TO PETITION

HENRI BROWN,
Counsel for Respondent.

September 1, 1942.



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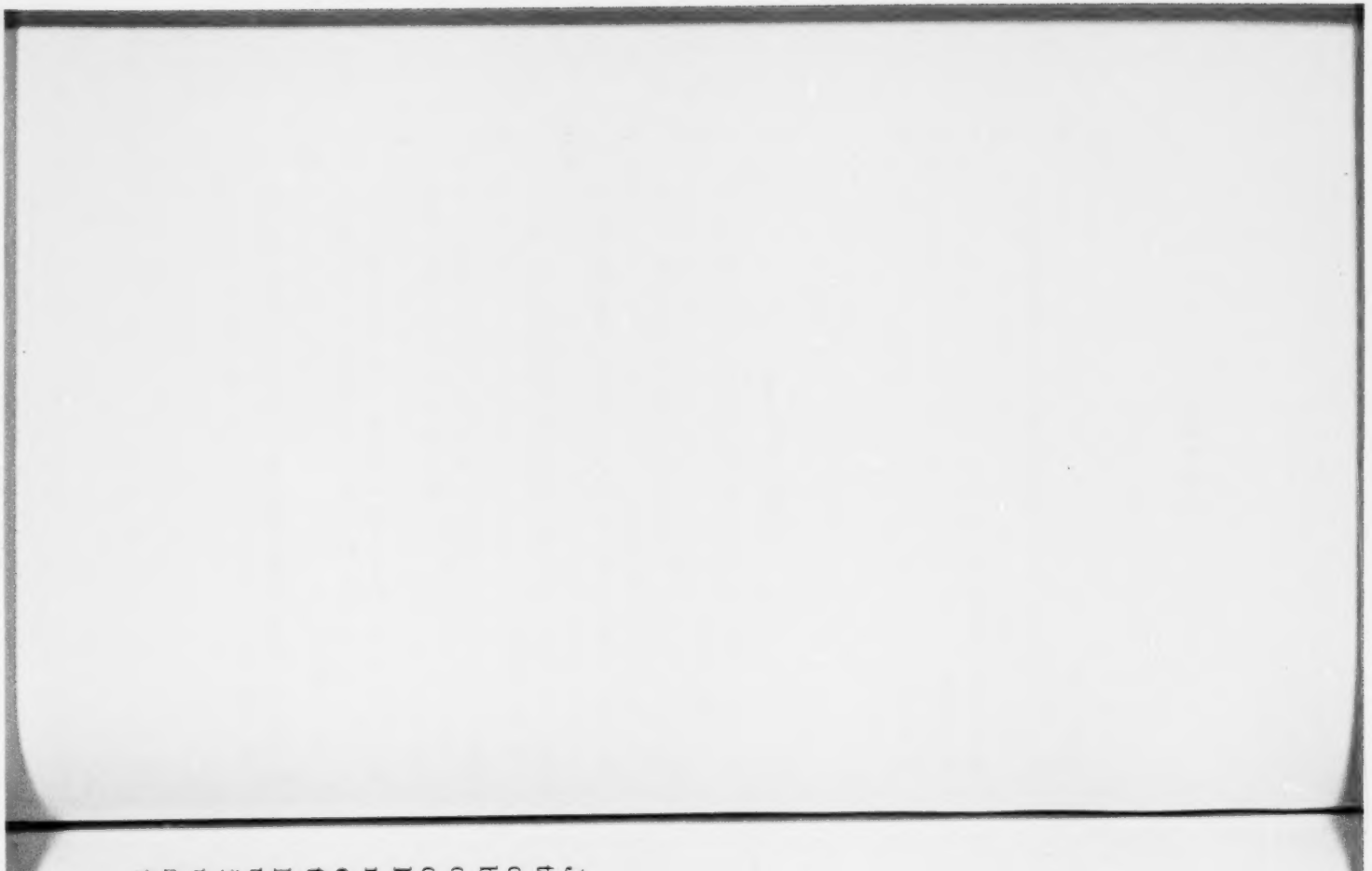

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BRIEF IN OPPOSITION TO PETITION

Statement

Petitioner was a member of the "Comunidad" José J. Benítez e Hijos, which had large holdings of land on the island of Vieques, Puerto Rico, used for growing sugar cane and for pasturage. The Comunidad also owned cattle, buildings, agricultural equipment, and held the capital stock of the Benítez Sugar Company, a corporation. The latter corporation owned a sugar factory, agricultural land, a large number of livestock, trucks, equipment, buildings, a railroad with locomotives and rolling stock, all on the island of Vieques, and devoted to the growing of sugar cane and the manufacture of raw sugar and molasses, and the transportation, marketing, and sale of such manufactured products. The corporation also extensively financed the growing of sugar cane by independent "colonos" or farmers under grinding contracts calling for the processing of such sugar cane at the corporation's sugar factory. Since 1917, the operations of the Comunidad and the Benítez Sugar

Company had been conducted as a single and integrated enterprise devoted to the growing of sugar cane and the manufacture of that cane and cane grown by independent farmers into raw cane sugar and molasses, and to the sale and transportation of the sugar and molasses.

The Comunidad had been constituted by contract between the widower and the heirs of Carlota Sampayo Guzmán in 1917, and by successive renewals extended to July 30, 1935. On July 1, 1933, the Bank of Nova Scotia, under the terms of a crop loan agreement with the Comunidad, took possession of the properties and operated them for the account of the Comunidad and the Sugar Company, applying the net proceeds to the repayment of the crop loans. When the contract regulating the Comunidad expired on July 30, 1935, no partition or liquidation of the business was had, but the Bank continued the operation of the business as theretofore, until a receiver took over.

On October 20, 1936, the Bank of Nova Scotia filed in the District Court of the United States for Puerto Rico a bill in equity against the Benítez Sugar Company, and various persons, including the petitioner, individually and as members of the aforesaid Comunidad, seeking foreclosure of certain securities and of a crop lien in satisfaction of various joint and several obligations of the corporation and the Comunidad.

Upon the filing of the bill for foreclosure a receiver was appointed. The receiver took possession of the properties of the integrated enterprise and operated the same under orders of the court. A final decree was rendered on August 22, 1938, in favor of the Bank. The decree adjudged that the Comunidad and the Sugar Company were jointly and severally indebted to the Bank for $673,569.82 with interest; that the members of the Comunidad were individually liable in proportion to their respective participations therein, that of the petitioner being a one-twelfth interest; that the members of the Comunidad, in proportion to their respective liabilities, and the Benítez Sugar Company, must on or before September 1, 1938, pay to the Bank the said sum with interest, in default of which a special master was

directed to sell at public auction the various pledged and mortgaged securities. It also contained provision for an eventual deficiency judgment.[1]

The amount found to be due respondent by said foreclosure decree not having been paid, the foreclosure sale of the securities was duly held by the master on October 13, 1938, and thereat the securities were sold to respondent, the only bidder at the sale, for $466,250. On October 24, 1938 a hearing was held on motion to confirm the master's sale. No opposition or objection was made at the hearing and the sale was duly confirmed by the court.

On April 22, 1939, respondent moved for a deficiency judgment in the sum of $272,470.53. At the hearing on this motion, on April 28, 1939, no objection was made thereto by petitioner and on May 9, 1939, the deficiency judgment was entered against the Benítez Sugar Company and the members[2] of the Comunidad, petitioner's liability being fixed at $22,705.87 plus interest thereon. Subsequently, petitioner filed a petition to vacate the deficiency judgment, which petition was denied by order of the District Court on June 30, 1939.

Petitioner seasonably appealed from the deficiency judgment and the Circuit Court of Appeals on January 30, 1942 entered its decision vacating the deficiency judgment and remanding the case to the District Court for further proceedings in conformity with the opinion. (*Benítez* v. *Bank of Nova Scotia,* 125 F. (2d) 519 (C. C. A. 1st, 1942.)

It is this decision of the Circuit Court of Appeals for the First Circuit, vacating the deficiency judgment and remanding the case to the District Court that petitioner now seeks to have this court review on certiorari.

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[1]Petitioner attempted to appeal from this decree of August 22, 1938, but in the case of *Benítez* v. *Bank of Nova Scotia,* 109 F. (2d) 743 (C. C. A. 1st, 1940), the attempted appeal was dismissed because not taken within the statutory period.

[2]With the exception of Gabriel Ferrer Otero, a citizen of the Republic of Spain, who had been served in the original suit by publication only.

It is deemed necessary to make reference also to the bankruptcy proceedings filed by petitioner under Section 75 of the Bankruptcy Act.

Her petition as an alleged farmer was filed October 13, 1938, just fifty-five minutes prior to the time of the foreclosure sale under the equity decree of August 22, 1938. This petition was dismissed by order of the District Court on January 3, 1939. The order of dismissal was affirmed by the Circuit Court of Appeals for the First Circuit. (See *Benítez* v. *Bank of Nova Scotia,* 109 F. (2d) 743 (C. C. A. 1st, 1940) Reh. Den.) In affirming the order of dismissal, that appellate court held that the definition of the term "farmer" contained in Section 1(17) of the Bankruptcy Act as amended by the Chandler Act was the applicable one.

On certiorari, this Court reversed said Circuit Court, holding that the applicable definition of the term "farmer" was the one contained in Section 75(r) of the Bankruptcy Act, and it remanded the case to said Circuit Court for decision of the other questions in the light of said holding. (See *Carlota Benítez Sampayo* v. *Bank of Nova Scotia,* 1941, 313 U. S. 270, 61 S. Ct. 953, 85 L. ed. 1324, Reh. Den. 62 S. Ct. 51, 86 L. ed. .)

After reargument before said Circuit Court of Appeals the order of dismissal of the District Court was vacated and the case remanded to the District Court with instructions to make a specific finding on the question as to whether petitioner was primarily engaged in the poultry business. (See *Benítez* v. *Bank of Nova Scotia,* 125 F. (2d) 523 (C. C. A. 1st, 1942).) This Court refused to grant certiorari. (See *Carlota Benítez Sampayo* v. *Bank of Nova Scotia,* No. 1197, June 8, 1942, 86 L. ed. 1197; Petition for rehearing pending.)

In the Decision of the said Circuit Court of Appeals vacating the deficiency judgment, it was said:

> "* * * If the district court should determine upon reconsideration of the bankruptcy case that appellant is not a 'farmer' within the meaning of Section 75(r) and hence not entitled to invoke the remedial provisions of Section 75, that court will reenter the defi-

ciency judgment against appellant. If, however, the determination is that the farmer-debtor petition was properly filed, then the deficiency judgment will stand vacated as to this appellant."

The Decision of the Circuit Court of Appeals

The Circuit Court of Appeals held that the matters adjudged by the foreclosure decree of August 22, 1938 had become *res judicata* as to petitioner, and could not be reexamined in the appeal from the deficiency judgment which merely followed the terms of the foreclosure decree.

Referring to its decision vacating the order of dismissal in the bankruptcy proceedings and remanding the case to the District Court for further proceedings (*Benítez* v. *Bank of Nova Scotia,* 125 F. (2d) 523, cert. den. June 8, 1942), the Circuit Court of Appeals pointed out that if the farmer-debtor proceeding was properly filed, it would operate as a stay against proceedings directed against petitioner individually for a deficiency judgment by virtue of subsections (o) and (p) of Section 75 of the Bankruptcy Act. As a consequence that court vacated the deficiency judgment and remanded the case to the District Court with the instructions already mentioned.

The Circuit Court, however, said that the filing by petitioner of her individual farmer-debtor petition under Section 75 of the Act could not have invalidated the foreclosure sale, pursuant to the equity decree of August 22, 1938, of the securities pledged by the Comunidad or partnership of which she was a member.

The other propositions contained in the opinion do not appear to be directly challenged here.

Questions Presented

The petition and brief in support thereof are altogether too lengthy to justify any attempt to fashion this brief in opposition as a specific reply to everything said by petitioner.

We shall limit this brief to an attempt to show that the Circuit Court of Appeals decided no question properly reviewable at this time by this Court on certiorari.

Argument

I.

Petitioner urges that the court below erred in holding that the Comunidad was to be assimilated to a partnership for purposes of the Bankruptcy Act. An examination of the opinion in *Benítez* v. *Bank of Nova Scotia*, 110 F. (2d) 169 (C. C. A. 1st, 1940), will reveal that the Circuit Court merely followed the view of the Supreme Court of Puerto Rico on a question of local law, viz., the nature of the interest of a member of the Comunidad. In doing so, the Circuit Court was right.

But if on the remand of the bankruptcy proceedings the District Court finds that petitioner was not primarily engaged in the poultry business and hence was not a "farmer" as that term is defined in Section 75 of the Bankruptcy Act, the question as to the nature of the interest of a member of the Comunidad, it would seem, will be of academic interest only.[3]

II.

The second proposition argued in petitioner's brief in support of the petition assumes that the Circuit Court erred in saying that the Comunidad for the purposes of the Bankruptcy Act may be properly assimilated to an Anglo-American partnership. What we have pointed out under I above would seem to be a sufficient answer to this proposition.

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[3]We take it that this Court must have so concluded when it denied the petition for certiorari in the case of *Carlota Benítez Sampayo* v. *Bank of Nova Scotia*, No. 1197, June 8, 1942, 86 L. ed. 1197.

III.

By the third proposition argued by petitioner it is sought to establish as her defense to the bill of complaint upon which the equity decree of August 22, 1938 was rendered, an alleged lack of jurisdiction of the district court over one of the members of the Comunidad, who, urges petitioner, was an indispensable party to the equity suit. This lack of jurisdiction, she urges, was due to the alleged death of that defendant prior to the completion of service by publication.

Even assuming that petitioner could have ever taken advantage of that defense, the matter has become *res judicata* by virtue of the equity decree. In the trial leading to that decree evidence was adduced showing that said defendant was alive and had been properly served. Petitioner has many times and in various ways sought to raise the question of the death of that defendant. On one occasion, upon her motion, a hearing was had in the district court on the question, at which she did not even appear, and neither she, nor anyone else, has ever produced any competent evidence as to the supposed death of said defendant.

IV.

Finally, petitioner urges that the equity decree of August 22, 1938 has never become final as to her, because the filing of her farmer-debtor proceedings under Section 75 of the Bankruptcy Act suspended the running of the statutory period within which an appeal might have been taken by her from said decree.

Petitioner raised this same question and it was decided against her contention by the Circuit Court of Appeals for the First Circuit in the case of *Benítez* v. *Bank of Nova Scotia*, 109 F. (2d) 743 (C. C. A. 1st, 1940). No review of that decision by this court was sought, and it would seem that that case has settled the question.

Be that as it may, there seems to be no merit to the contention. (See *Lehmer* v. *Scott & Borden*, 28 Cal. App. (2d) 128, 82 P. (2d) 41.)

Conclusion

The decision of the Circuit Court of Appeals below is correct. There is no conflict of decisions and no question of importance calling for a review by this Court.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

HENRI BROWN,
Counsel for Respondent.

September 1, 1942.

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